

Remarks

Claims 15, 18, 20, 21 and 34-38 are pending in the subject application. Favorable consideration of these claims, in view of the remarks below, is respectfully requested.

Claims 15, 18, 20, 21 and 34-38 have been rejected under 35 U.S.C. §103(a) as being unpatentable over P. Langhorne *et al.* (Age and Ageing 2002) in view of Fong (*The Journal of Infectious Diseases*, 2000, Vol. 181, Suppl. 3, pp. S514-S518). The applicants respectfully traverse this ground for rejection because the cited references, taken either alone or in combination, do not disclose or suggest the use of an anti-infective agent to reduce lethality and morbidity from pneumonia, urinary tract infection, and/or sepsis, in patients who have just had a stroke. Furthermore, the Langhorne *et al.* reference, which was published after the current applicants' priority date, is not available as prior art.

The method of the present invention involves the administration of an anti-infective therapy to a patient shortly after (within 72 hours) a patient has suffered an acute stroke. Surprisingly and advantageously the method of the subject invention reduces lethality and morbidity from pneumonia, urinary tract infection, and/or sepsis, in stroke patients.

The Langhorne *et al.* reference provides no indication that antibiotics are, or should be, administered, as a matter of course, immediately following a stroke. The skilled medical clinician knows that antibiotics must not be used indiscriminately, particularly when patients have not exhibited any signs or symptoms of an infection. Concerns regarding increased costs and the promotion of drug-resistant microbes teach away from such a practice.

The Fong (2000) reference pertains almost entirely to chronic bacterial infections that are the cause of the stroke (e.g. through atherosclerosis) (see page S514, left column, line 8). The applicants respectfully submit Fong does not disclose or suggest the method as claimed by the current applicant.

Further, the applicants respectfully traverse this rejection because the Langhorne *et al.* publication is not available as prior art against the claimed invention. The Langhorne *et al.* reference was published in September 2002. The subject application, which claims the benefit of German application No. 10210536.7, filed on March 5, 2002, predates the Langhorne *et al.* reference. The applicants have previously filed a certified priority document, as evidenced by the Filing Receipt

dated June 24, 2005, to perfect this priority claim. The applicants submit herewith a certified translation of the priority document establishing that the priority document satisfies the enablement and description requirements of 35 U.S.C. §112 for the current claims. Thus, because the current application is entitled to a priority date that predates the Langhorne *et al.* reference, that reference is not prior art.

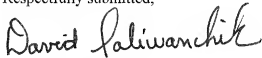
The Langhorne *et al.* reference, even in combination with the Fong reference, does not teach or suggest the claimed invention. Further, because the Langhorne *et al.* reference is not available as prior art, and because the Fong reference, on its own, does not render obvious the claimed invention, the applicants respectfully request reconsideration and withdrawal of the rejection under 35 U.S.C. §103 based on Langhorne *et al.* in view of Fong.

In view of the foregoing remarks, the applicants believe that the currently pending claims are in condition for allowance, and such action is respectfully requested.

The Commissioner is hereby authorized to charge any fees under 37 CFR §§1.16 or 1.17 as required by this paper to Deposit Account No. 19-0065. *

The applicants also invite the Examiner to call the undersigned if clarification is needed on any of this response, or if the Examiner believes a telephonic interview would expedite the prosecution of the subject application to completion.

Respectfully submitted,



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Attachments: Request for Continued Examination
English translation of Priority Application DE 10210536.7
Certificate of Verification of Translation